

**CALIFORNIA COASTAL COMMISSION**

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# Tue 22a

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Staff: GDC-SD  
Staff Report: 9/23/03  
Hearing Date: 10/7-10/03

REGULAR CALENDAR  
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-02-119

Applicant: Beach House Restaurant

Agent: Jeff Goldfarb

Description: Follow-up to emergency permit (#6-97-144-G) to repair existing rip rap revetment to include the addition of approximately 20 tons of new stones, realignment of public access path across the revetment, and after-the-fact approval to construct a 750 sq. ft. restaurant addition, a 420 sq. ft. upper story balcony dining area and a 1,172 sq. ft. outdoor patio dining area on an approximately 35,284 sq. ft. lot containing an approximately 7,287. sq. ft. restaurant.

Site: 2530 South Highway 101, Encinitas, San Diego County.  
APN 261-162-23

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STAFF NOTES:

The project was initially scheduled on the June 11 - 13, 2003 Commission meeting, but was continued at the request of the applicant to respond to the staff recommendation.

**Due to Permit Streamlining Act requirements, the Commission must act on the application at the October Commission hearing.**

Summary of Staff's Preliminary Recommendation: Staff is recommending approval of revetment repair and the after-the-fact additions to the restaurant. The restaurant is located in a hazardous location, where the established form of shoreline protection is rock revetment. Adequate parking can be provided to serve the proposed restaurant additions. However, some of the rip rap and a portion of the outdoor dining area have been located within a public accessway previously required by the Commission, blocking lateral access in the pathway in an area where little sandy beach normally exists. The applicant proposes to reorganize the rip rap so as to create a flat walking surface on top of the rip rap and to realign the northern half of the existing access path further seaward so as to

connect with an access path located on the north side of the site. The proposed access path is consistent with the intent of the Commission's original action to create a public access path across the site.

Other Special Conditions require the maintenance of the revetment, approval by the State Lands Commission, and a parking program that prohibits charging for the valet parking required to accommodate the needed parking on the site.

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Substantive File Documents: Certified City of Encinitas Local Coastal Program;  
CCC Files #F2857; #F5483; #F9335; #6-84-437; #6-83-21; #6-97-144-G;  
#6-97-144;

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**I. PRELIMINARY STAFF RECOMMENDATION:**

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 6-02-119 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions.**

See attached page.

### III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director final plans for the proposed development that substantially conform with the surveyed plans submitted to the Commission by Spear & Associates dated 1/20/03 and Skelly Engineering dated 8/15/03, but shall be revised to include cross-sections, and shall graphically depict or indicate in plan notes the following items:

- a. The proposed revetment has been engineered such that the encroachment onto the beach is the minimum necessary to protect the structure, and that all riprap that has migrated beyond the toe of the revetment has been removed or incorporated into the revetment. In no case shall the repaired revetment encroach further seaward than the existing revetment, as shown on Exhibit #4.
- b. The access path shall be permeable so as to permit runoff to filter through the path.
- c. The access path shall contain a level surface so as to facilitate public access.
- d. The elevation of the access path shall be revised to be at or above the grade of the adjacent outdoor dining patio (approximately 11.5 ft. above Mean Sea Level (MSL)) so as to maximize views of the ocean by users of the path.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Shoreline Protection Monitoring Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a monitoring plan, prepared by a licensed geologist, or civil or geotechnical engineer for the review and written approval of the Executive Director. The plan shall be sufficient to assess the performance of the existing revetment and shall include at a minimum:

1. A description of the approved shoreline protection device;
2. A discussion of the goals and objectives of the plan, which shall include maintenance of the revetment to assure its optimum designed performance without adversely affecting surrounding development, public access along the coast, or public views, or requiring fill of tidelands.

3. Provisions for taking measurements of the reconfigured revetment documenting the location of the toe, sides and elevation of the revetment and the alignment of the 8 ft.-wide public access path across the revetment. The plan shall identify exactly where such measurements will be taken, e.g. by reference to benchmarks, survey positions, or points shown on an exhibit, and the frequency with which such measurements will be taken;
4. Provisions for submission of “as-built” plans for the repaired revetment and public access path, showing the permitted structures in relation to the existing topography and showing the measurements described in subsection (3) above, within 30 days after completion of construction of the repairs to the revetment.
5. Provisions for inspection of the condition of the shoreline protection device by a licensed geologist, or civil or geotechnical engineer, including the scope and frequency of such inspections.
6. Provisions for submittal to the Executive Director by May 1 of every year for the life of the structure of a monitoring report that has been prepared by a licensed geologist, or civil or geotechnical engineer. Each monitoring report shall contain the following:
  - a. An evaluation of the condition and performance of the approved shoreline protection device, including an assessment of whether any weathering or damage has occurred that could adversely impact future performance of the device,
  - b. All measurements taken in conformance with the approved monitoring plan,
  - c. A description of any migration or movement of rock that has occurred on the site, and
  - d. Recommendations for repair, maintenance, modifications or other work to the device.

If a monitoring report contains recommendations for repair, maintenance or other work, the permittee shall contact the Coastal Commission District Office to determine whether such work requires a coastal development permit.

The permittee shall undertake development in accordance with the approved final plans. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### 3. Lateral Access Condition

A. The applicant shall establish an eight (8) foot wide accessway dedicated to the public for pedestrian access along the shoreline. The accessway shall be located along the top elevation of the reorganized revetment and shall extend from the south property line to the north property line in a diagonal fashion so as to connect to the existing public access paths located seaward of the restaurants at 2526 and 2588 South Coast Highway as depicted on an exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit. The applicant shall keep the entire access way clear of all obstructions, including tables, and chairs. The applicant shall allow a public agency or private association approved by the Executive Director to construct improvements on the public accessway for the purpose of facilitating public access. The public accessway established pursuant to this condition shall replace and supercede the access way created pursuant to Coastal Development Permit #F2857 (County of San Diego File/Page No. 76-39306, recorded on November 23, 1976).

**B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #4 attached to this staff report.

4. Staging Area for Construction. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit final construction staging and access plans to the Executive Director for review and written approval. The final plans shall specifically indicate in written notes that:

- a. No overnight storage of equipment or materials shall occur on sandy beach. During the construction stages of the project, the permittee shall not store any construction materials or waste where it will be or could potentially be subject to wave erosion and dispersion. In addition, no machinery shall be placed, stored or otherwise located in the intertidal zone at any time, except for the minimum necessary to perform repairs to the revetment and construct the public access path. Construction equipment shall not be washed on the beach.
- b. Construction access corridors shall be located in a manner that has the least impact on public access to and along the shoreline.
- c. No work shall occur on the beach during the summer between Memorial Day weekend and Labor Day of any year.
- d. The staging site shall be removed and/or restored immediately following completion of the development.

The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Construction Responsibilities and Debris Removal. The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion or dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the beach within 7 days of completion of construction;
- (c) All excavated beach sand shall be redeposited on the beach;
- (d) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material;

6. State Lands Commission Approval. The applicant shall submit to the Executive Director for review and written approval, a written determination from the State Lands Commission that:

- a) No state lands are involved in the development; or
- b) State lands are involved in the development, and all permits required by the State Lands Commission have been obtained; or
- c) State lands may be involved in the development, but pending a final determination of state lands involvement, an agreement has been made by the applicant with the State Lands Commission for the project to proceed without prejudice to the determination.

7. Other Permits. The permittee shall provide to the Executive Director copies of all other required local, state or federal discretionary permits for the development authorized by CDP #6-02-119. The applicant shall inform the Executive Director of any changes to the project required by other local, state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

8. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

9. Assumption of Risk, Waiver of Liability and Indemnity Agreement. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wave run-up and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

10. Parking. The applicant shall provide at least 96 valet parking spaces on the site during operating hours. No fee shall be charged for the use of valet parking on the site.

11. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Condition Compliance. **WITHIN 90 DAYS OF COMMISSION ACTION ON THIS CDP APPLICATION**, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

13. Construction of Public Access Improvements. **WITHIN 60 DAYS OF ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, or within such additional time as the Executive Director may grant for good cause, the applicant shall repair and reorganize the rip rap so as to create the 8 ft.-wide public access path, consistent with Special Condition #1, and the public access way required by Special Condition #3. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

14. Future Modifications to Revetment. If modifications to the revetment are required in the future for any reason which results in interference with the provision of the required public access along the approved alignment, the applicant shall provide for public access inland of the revetment and shall apply for an amendment or coastal development to formally move or realign the public access path to an approved inland location.

15. Public Access Signage. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a sign program, subject to the Executive Director's written approval, for two public access signs to be installed at the north and south ends of the restaurant near the public access path. The signs shall indicate the accessway is available for use by the general public at all times. The signs shall be installed within 60 days following the acceptance of responsibility by a public agency or private association acceptable to the Executive Director for maintenance and liability of the accessway.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject site consists of an existing 2-story, approximately 9,629 sq. ft (7,287 sq. ft. authorized and 2,342 sq. ft. unauthorized) oceanfront restaurant located in the Cardiff area of the City of Encinitas. The 35,284 sq. ft. lot is protected by an existing approximately 145-foot long riprap revetment located immediately west of the restaurant, which extends approximately 10 to 50 ft. seaward across the length of the western side of the property. The site is currently striped for approximately 58 parking spaces; however, fee-based valet parking operates during all business hours.

The proposed development has several components to it. First, it constitutes the follow-up permit to an emergency permit issued in November 1997 (#6-97-144-G). This emergency permit authorized the repair and maintenance of the existing riprap revetment located seaward of the restaurant, consisting of the addition of twenty 4 to 5-ton stones to the existing revetment. However, the amount of stone actually placed on the revetment was approximately forty tons of new stone, significantly less than authorized by the emergency permit.

The applicant also proposes to realign an existing public access path that lies between the restaurant and the revetment by reorganizing the existing rip rap and constructing a



walkable 8 ft.-wide surface across the top of the revetment which will connect to existing public access paths to the north and south of the subject site.

The applicant also requests after-the-fact authorization for several additions and changes which have been made to the restaurant without a coastal development permit, including the enclosure of a 750 sq. ft. “garden room” dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and construction of a 420 sq. ft. upper deck used for dining.

The proposed development is located within the City of Encinitas which has a certified LCP; however, it is located on filled public trust lands within the Commission's area of original jurisdiction and as such, the standard of review is Chapter 3 policies of the Coastal Act, with the City's LCP used as guidance.

2. Site History. The site has been the subject of a number of coastal development permit (CDP) applications. In October 1976, the Commission approved a permit for removal of an existing structure, construction of the Triton Restaurant (now the Beach House), provision of 58 parking spaces, installation of a monument sign and the reconstruction of an existing riprap revetment (CDP #F2857). Conditions of approval on that permit required the recordation of an eight-foot wide public access easement running parallel to the riprap between the riprap and the restaurant. The exact wording of the condition is as follows:

That the applicant agrees to record in favor of the public an 8 foot wide easement parallel to the existing alignment of the rubble seawall delineating the western limit of raised portions of the applicant's parcel. The purpose of such easement is to insure some public agency the opportunity to construct, at some future date, a public walkway which would provide “dry land” access parallel to the beach during periods of high tide or storm conditions and a route of travel for those not wishing to walk on sandy beach areas because of handicaps or personal preferences. Evidence of the required recordation of the easement and a map delineating such easement must be filed with the Commission prior to the commencement of construction.

In compliance with this condition, the applicant actually recorded a dedication (not simply an easement) for an 8-foot wide walkway with the condition that it remain:

“open to the public for access to the Pacific Ocean and its shoreline for walking and agrees that Dedicator shall not construct any improvements on or in said public access area...Said public access privilege shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective...”

In April, 1977, the Commission approved CDP #F5483, which was an amendment to the original permit. It proposed changes to the roofing and architectural design of the restaurant, but did not include modifications to the building footprint, siting, square footage, parking or landscaping. It was approved with no special conditions and neither

the previously-recorded access easement nor the revetment was addressed in, nor affected by, that action.

A third application was submitted in August, 1984, proposing construction of a fifty sq. ft. storage building as an addition to the existing restaurant (CDP #6-84-437). Staff notes in the file recorded two meetings with the applicant's agent discussing the items needed to complete the file as well as discussions regarding the access easement. The notes indicate concern that the proposed storage structure was improperly sited and would obstruct the eight-foot-wide access easement area. The notes also indicate that staff specifically informed the applicant that any expansion of dining area, including new outdoor dining, would require a coastal development permit. Staff informed the applicant that if the intent of the proposed storage unit was for storage of tables and chairs for outdoor dining, then such outdoor dining must also be included in the proposed project. The items required to complete the file were never received; thus, the application was never filed or processed.

In November 1997, the Commission issued an emergency permit authorizing the addition of twenty 4 to 5-ton stones to the existing revetment and also authorized the retrieval by mechanized equipment of stones which had migrated seaward from the existing revetment onto the sandy beach (CDP #6-97-144-G). A letter received in Commission office on August 28, 1998, indicated there was no way to get equipment onto the beach to reposition migrated stones, and the migrated stones were not visible in any event. Thus, that portion of the authorized emergency repairs did not occur. Also, a smaller amount of stone was ultimately imported than had been approved in the emergency action, such that a total of only forty tons of new stone was actually placed on the revetment.

In June 1998, the applicant submitted a follow-up permit to the emergency permit (#6-97-144). However, the permit was withdrawn on March 5, 1999, prior to Commission action, and thus, the emergency work has not yet been authorized.

3. Public Access/Parking. Numerous policies of the Coastal Act require that new development protect or enhance public access to and along the shoreline. These policies include:

#### Section 30210

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby....

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30252.

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

The Off-Street Parking section of the City of Encinitas' certified LCP states, in part:

30.54.020. General Provisions.

A. Off-street parking facilities, for both motor vehicles and bicycles, shall be provided on a development site as required in this chapter in terms of both the number of spaces required and their development and landscaping requirements as follows:

1. All new structures on a development site require all parking facilities on the site to meet the current standards.

2. Addition of new building square footage (attached or detached) to existing building(s) on a development site requires that parking be provided at current ratios for the additional square footage without any reduction to existing parking.

[...]

F. All required off-street parking spaces shall be designed, located, constructed, and maintained so as to be fully usable during workday periods or as needed by the use of the premises, and shall be permanently available without charge to all uses as intended under this title. Valet parking service may be used but signs must be posted to advise "NO CHARGE".

#### 30.54.030 Schedule of Required Off-Street Parking.

A. The number of off-street parking spaces required for automobiles shall be no less than that set forth in the following table:

<u>USE</u>	<u>PARKING SPACES REQUIRED</u>
Restaurants	1 space for each 100 sq. ft. of gross floor area. In an area with an adopted Specific Plan, the regulations of the Specific Plan shall apply. (Ord. 94-11)

### **Public Access and Recreation**

The subject application includes a request for after-the-fact approval of the installation of approximately 40 tons of rock, enclosure of a 750 sq. ft. "garden room" dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and a 420 sq. ft. upper deck used for dining.

The subject site is the middle of three contiguous properties all improved with restaurants (known locally as "restaurant row"). The three sites are located on the oceanfront in the Cardiff area of the City of Encinitas. The properties are located between two state beaches, the North Cardiff State Beach and South Cardiff State Beach. Adequate vertical access to the beach is currently available at the adjacent North Cardiff State Park facility, which provides approximately 105 parking spaces. However, Cardiff reef, one of the most popular surfing spots in San Diego County is located seaward of the State Parks facility. Therefore, it is critical that public access at this location not be adversely affected by new development. In addition to ocean access, public access along the shoreline is a high priority of the Coastal Act. This is an area where very little sandy beach currently exists, and there is no lateral public access available except at the lowest tides.

The Commission, through past permit actions, required public access easements on all three of the restaurant row properties (ref. CDPs #6-83-165/Saxten, #F2857/Triton, #6-85-4/Chart House). These were to be located on the dry upland area between the existing restaurants and the revetments located seaward of the restaurants, in order to provide dry access during all tidal regimes and storm conditions. ( The accessways, however, were required at different times and, thus, do not quite form a contiguous path). Exhibit #6 identifies the locations of the public access easements fronting these three restaurants.

The subject property is currently developed with a two-story restaurant, a paved parking lot, landscaped areas and a riprap revetment. The original Commission action on the subject site approved construction of the restaurant in a location that would allow an 8 ft.-wide public accessway to be provided between the restaurant and the revetment. However, although the restaurant appears to be sited in its approved location, the current plans and on-site conditions show that the existing riprap revetment, proposed herein for after-the-fact maintenance and augmentation, and a portion of the dining patio, which is also proposed for after-the-fact approval, are located within the dedicated public accessway, thereby precluding improvement of the walkway and the potential for the public to use the area. (see Exhibit #5).

In past conversations between Commission staff and the restaurant lessee, the restaurant lessee suggested that the riprap was probably modified repeatedly, during the interim between the Commission's last action in 1977 and the time the current lessee took over the property. Severe winter storms in 1982-1983, and again in 1987-1988, resulted in the construction of many shoreline protective devices up and down much of the coastline of San Diego County (and elsewhere in California). No records of emergency permits have been found for the subject site.

Most recently, the subject applicant augmented its existing riprap revetment under an emergency permit (CDP #6-98-144-G) approved in 1998. As a result, riprap has been placed landward of the originally approved location, directly over the dedicated public accessway. Placement of riprap and patio in the accessway is inconsistent with the terms of CDP #F2857 and the dedicated accessway, which requires that the area remain open to the public for walking. Permitting the after-the-fact revetment repair and patio construction would be in direct conflict with the Commission's past action, since it would allow the applicant to maintain the riprap in a manner that violates the requirement to provide a public accessway. Provision of the public accessway was required in the earlier action to mitigate the impacts of the development proposed at that time, particularly the reconstruction of the revetment, on public lateral access as it then existed. Only with the access dedication was the Commission able to find that earlier development consistent with Chapter 3 of the Act.

To address this concern, the applicant proposes to reorganize the existing rip rap and construct an 8 ft.-wide flattened path across the top of the revetment. In addition, the applicant proposes to realign the accessway so as to directly connect to the existing public access paths located on both the north and south sides of the subject site. The advantage of this concept is that the revised walkway would then line up with and

connect to the accessway to the north at Charlie's Restaurant which currently does not occur with the Commission's previously approved alignment. By approving this new alignment, the public will be afforded continuous access from the Cardiff State Beach (North) day use parking lot, past the three restaurants to the South Cardiff State Beach area. In addition, by realigning the access path, the path will be clearly separated from the outdoor dining area such that the public will be less confused as to whether the path is public or private. However, to assure that the public is aware that the path is public, Special Condition #15 has been attached requiring the applicant to post public access signs on both the north and south sides of the proposed improved access path following the acceptance of responsibility for maintenance and liability by a public or private entity. In this way, the privatizing effect of outdoor dining so close to a public access path will be lessened such that the public will not feel inhibited from using the path. The proposed walkway path and realignment are consistent with the Commission's earlier intent to assure dry upland access across the site.

The Commission's engineer has reviewed the proposed walkway design and has identified safety and visual concerns with the proposed elevation of the walkway. As proposed, the walkway is approximately 1 ½ ft. lower than the neighboring restaurant patio with, in some places, a large approximately 4 ft.-high rip rap stone on its seaward side. The safety concern is that the large stone may become dislodged onto the path and the visual concern is that small children may not be able to see over the stone. Special Condition #1d requires the applicant to revise the project to increase the height of the walkway to at least the same elevation of the neighboring patio which is approximately 11.5 ft. above Mean Sea Level (MSL). By elevating the path, the revetment will be more stable, safe and usable. Additionally, public views toward the ocean from the pathway must be maintained.

Special Condition #6 has been attached requiring the applicant to provide documentation that the State Lands Commission has reviewed the subject development request to make sure public lands are not involved with the project or that any work on public land has been properly authorized. In addition, Special Condition #8 has been attached to notify the applicant and property owner that the Commission's action does not affect any other public rights that might exist on the property.

Since the proposed revetment is not intended to protect the subject site from all hazard, but only to reduce the threat, it is possible that additional shoreline protection may be required to protect the existing restaurant. To assure that any future shoreline protection does not impact the required 8 ft.-wide public access path, Special Condition #14 has been attached. This condition requires that the applicant obtain an amendment to the subject permit or a new coastal development to move the public access path further inland if for any reason public access is not able to be provided in the approved accessway at any time in the future.

With Special Conditions to assure the construction of a safe and walkable upland access path connecting to existing access paths on both the north and south ends of the path and that its construction will not result in further seaward encroachment of the revetment

upon the beach, the proposed access path realignment will be consistent with the intent of the Commission's earlier approved access path. Therefore, as a result of the subject development, the public will be able to enjoy lateral public access along the shoreline as previously required by the Commission.

## **Parking**

Although the subject site is within the original permit jurisdiction of the Commission, the City of Encinitas' certified LCP contains policies regarding parking and public access that the Commission has found consistent with the Coastal Act for this area, and thus, contains useful guidance for the review of the subject project.

The subject permit application includes the after-the-fact addition of a 750 sq. ft. garden room and two outdoor patio dining areas, a 1,172 sq.ft. lower patio and a 420 sq. ft. upper deck for a total addition of 2,342 sq.ft. In total, the restaurant will have approximately 9,629 sq. ft. of floor area.

As noted above, the Encinitas certified LCP requires 1 parking space for every 100 sq. ft. of gross floor area for restaurants. (The applicants have suggested that the City's parking requirement applies only to "public area" and not gross square footage. However, the Commission approved the City's LCP with the language quoted above, and City Encinitas staff have confirmed the requirement applies to the entire square footage of the structure, including outdoor dining areas (Bill Weedman, City Planner, pers. comm., 3/7/03)). Thus, as proposed, the project would require 96 parking spaces.

The on-site restaurant parking lot has approximately 58 striped parking spaces. However, the applicant has submitted a parking plan that demonstrates that by using valet parking, which currently operates during all business hours, the applicant can accommodate up to 121 cars on the site. Therefore, all of the required parking for the proposed structure can be accommodated on the subject site as long as valet service is provided.

However, the applicant has been charging for valet parking, which is inconsistent with the City's certified LCP, and could have an adverse impact on public access and recreation. There is free street parking on Highway 101 within walking distance of the Beach House, which is normally used by beach goers. If the Beach House were to continue charging for parking, it is likely that some restaurant patrons would use the free parking rather than paying for valet parking, thereby displacing the beach-going public. However, the applicant can only provide the required parking through the use of valet parking. Therefore, Special Condition #10 requires that the applicant continue to provide valet parking for at least 96 vehicles during working hours, and that no fee shall be charged for the valet service.

In addition to valet parking, the applicant has been utilizing two separate overflow parking lots. The first overflow lot is the Plastino Building, a commercial structure with a 54 space parking garage located across Highway 101 from the Beach House at 2533

South Coast Highway 101. The owner and/or operator of this lot have entered into a lease with the applicant to make available, on a non-exclusive basis, 52 spaces Monday through Friday from 5 pm to close, and all day Saturdays and Sundays.

However, the Commission approved a permit in March 1983 (CDP #6-83-21) for construction of building and parking garage, that contains a specific requirement that the 54 spaces be made available for public parking from 5:00 pm to 3:00 am Monday through Friday, and from 8:00 am to 3:00 am on weekends and National Holidays. Thus, it inconsistent with the terms of the approved coastal development permit for the Plastino site to make these spaces available to the Beach House. This apparent violation of the Coastal Act will be addressed in a separate enforcement action with the owner of the Plastino site.

The second overflow lot used by the Beach House is the Headline Graphics building located several blocks away at 131 Aberdeen Drive. The Commission approved a permit in April 1981 for construction of a 2-story office building on this site (CDP #F9335), without any restrictions on the use of the parking. The Beach House has a lease agreement for the exclusive right to use this lot, Monday through Saturday 5 pm to 12 am, and all day Sunday. This site is now within the City of Encinitas' coastal permit jurisdiction, and any changes of use on the site or changes to the parking lot that might conflict with the applicant's use of the lot would be reviewed by the City. Use of this site as an overflow parking lot is not specifically authorized or addressed by the subject permit.

In conclusion, the subject proposal for the after-the-fact placement of riprap and the addition of additional square footage to the Beach House restaurant has the potential to adversely impact public access. However as proposed and conditioned, the proposed development will result in improved public access through the construction of a walkable access path at the top of the revetment that connects to neighboring public access paths. In addition, as the applicant has demonstrated that through the use of valet parking there is adequate parking on-site to accommodate all of the existing and proposed restaurant floor area, without using the off-site lot across the street, the remaining portions of the proposed patio dining and restaurant additions are consistent with the public access and recreation policies of the Coastal Act.

4. Geologic Hazards. Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

In addition, Section 30253 of the Coastal Act is applicable and states, in part:



New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

As discussed above, the subject application includes a follow-up request to authorize the repair and maintenance of the existing riprap revetment located seaward of the restaurant, consisting of the addition of approximately forty tons of new stone to the existing revetment. Section 30235 of the Coastal Act requires that shoreline devices only be permitted if they are required to protect existing development and are designed to eliminate or mitigate adverse effects to sand supply.

The Commission has acknowledged in numerous permit actions that the three restaurants along restaurant row, as well as Highway 101 and the various public beach facilities in the area, are subject to wave action and erosion, that shoreline protection is required to protect the existing restaurants, and that no other feasible alternative is available to provide that protection (CDP 6-83-165/Saxten; 6-85-4/Chart House; 6-94-81/Chart House; 6-94-163/Chart House; 6-96-147/CA State Parks; 6-02-8/Charlie's; 6-02-022/CA State Parks; 6-02-023/CA State Parks; 6-02-66/Encinitas Revetment). Riprap revetment is the historical type of shoreline protection used along this approximately 1 mile long stretch of beach. All three of the restaurants and portions of South and North Cardiff State Beach facilities contain similar seaward riprap structures, as well as various stretches of Highway 101.

Even with a properly designed and maintained rock revetment, overtopping of the revetment is expected to occur in the future during periods of storm waves such as occur during an El Nino winter, subjecting the existing improvements to threat. There is little sand at all in front of the restaurant except at the lowest tides. In addition, because the revetment is founded entirely on sand, the rock is subject to settling or sinking and must be maintained regularly. However, a higher revetment or vertical wall would eliminate public views from the restaurant, thereby diminishing the attractiveness of the use as an oceanfront restaurant.

In addition to the approval for the placement of 40 tons of rock on the existing revetment, the applicant is also requesting after-the-fact approval for enclosure of a 750 sq. ft. garden room dining area, the construction of a 1,172 sq.ft. patio dining area, and a 420 sq. ft. upper deck used for dining. Section 30253 of the Act requires that new development minimize risk to life and property, not lead to erosion or instability to surrounding sites or require the construction of shoreline protective devices.

The Commission is not required to approve new development in hazardous areas, and the proposed additions are located on the seaward side of the existing restaurant or parking area. Nevertheless, as noted above, the proposed revetment is not intended to protect the subject site from all hazard, but only to reduce the threat. The hazard associated with the location of the new additions is not expected to be substantially greater than what previously existed. However, the revetment does need to be tightened and engineered, and all stray pieces of rock that have migrated or fallen from the revetment repositioned such that the toe of the revetment is “pulled-in” as tight as possible while still providing protection to the restaurant and does not extend further seaward than the existing revetment as shown on Exhibit #4. As such Special Condition #1a requires that the applicant engineer the revetment such that the encroachment onto the beach is minimized to the greatest extent feasible and that all migrated riprap has been removed or incorporated into the revetment. In no case may the repaired revetment encroach seaward further than the existing revetment.

Because the proposed development will be located in an area subject to wave action especially during winter storms, the applicant must assume all liability associated with the development. Therefore, Special Condition #9 has been attached which requires the applicant and property owner to assume all liability associated with the proposed development. Only with these conditions can the proposed development be found to be consistent with Sections 30235 and 30253 of the Coastal Act.

To assure ongoing maintenance occurs and that no additional shoreline protective devices or additional rock be placed at the site without benefit of a coastal development permit, Special Condition #2 has been attached. This condition requires the applicant to perform a survey of the revetment and easement following the repairs to the revetment and construction of the public access path, monitor the revetment and the public access path on an annual basis to assure it continues to perform as designed and if repairs are necessary to immediately contact the Commission to see whether permits are necessary to perform the repairs. With this condition, the Commission can be assured that the revetment will perform as designed without resulting in adverse impacts to surrounding areas or occupying additional public beach area. In addition, through monitoring and maintenance, the Commission can be assured that the public access path will continue to be provided and unencumbered seaward of the restaurant.

In summary, as conditioned, the proposed development while located in a hazardous area subject to wave action will not require additional shoreline protection other than what currently exists. As conditioned, the project will not result in the placement of any additional rock seaward of existing revetment toe, and the proposed maintenance will provide continuing protection for the subject site. Therefore, as conditioned, the proposed development is consistent with Section 30235 and 30253 of the Coastal Act.

5. Visual Resources. Section 30251 of the Coastal Act states as follows:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to

protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed development will be sited adjacent to the public beach on the west side of Highway 101 in the Cardiff community of Encinitas. This section of Highway 101 is designated in the City's certified LCP as a scenic highway with expansive views of the ocean to the west and San Elijo Lagoon to the east. Therefore any new development along Highway 101 has the potential to adversely affect public views of coastal resources. In this case, however, the proposed development will not result in any adverse visual impacts over what currently exists. Currently the subject two-story restaurant obstructs views of the ocean as motorists pass along Highway 101 such that any new development on the seaward side of the restaurant such as new restaurant construction, the addition of outdoor dining and altering the revetment would not be visible by motorists. In addition, as conditioned, the pre-existing approximately rock revetment may not extend onto the beach further than existing conditions. Views from the beach or ocean will not be obscured or adversely affected by any of the proposed developments over what currently exists. Therefore, as conditioned, the proposed development is consistent with Section 30251 of the Coastal Act.

6. Unpermitted Development. The proposed development will occur on a site where several developments have occurred without the benefit of a coastal development permit. These include the enclosure of a 750 sq. ft. "garden room" dining area, the construction of a 1,172 sq.ft. outdoor patio dining area, and a 420 sq. ft. upper deck used for dining. The permit also authorizes the placement of approximately 40 tons of rock onto the existing revetment as a follow-up to an emergency permit granted in November 1997. To assure that the unpermitted development component of this application is resolved in a timely manner, Special Condition #12 has been attached which requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, to ensure that the previously required public access path is installed in a timely manner, Special Condition #13 requires the applicant to complete construction of the accessway required herein, consistent with Special Condition #1, within 60 days of the issuance of this permit unless additional time is granted by the Executive Director for good cause.

In addition, the applicant has been utilizing an off-site parking lot at 2533 South Coast Highway 101 to valet park cars of restaurant patrons. Private use of this site after business hours is prohibited by the terms of coastal development permit #6-83-21. This apparent violation of the Coastal Act will be pursued as a separate enforcement matter with the owner of the off-site lot. The Commission's enforcement division will evaluate further actions to address this matter.

Although these developments have taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the policies of the City's certified LCP and the Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to these violations of the LCP or Coastal Act that may have occurred, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

7. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located on the east side of the public beach and on the west side of Highway 101 in the Cardiff community of the City of Encinitas. Although the City of Encinitas has a Certified LCP, the project site lies within the Commission's area of original jurisdiction, such that the standard of review is Chapter 3 policies of the Coastal Act. The subject site is designated as Visitor-Serving Commercial in the certified City of Encinitas Land Use Plan and the proposed development is consistent with that designation. In addition, Circulation Policies 6.1, 6.2 and 6.3 of the LUP provides for the protection and enhancement of access opportunities along the shoreline in cooperation with the State. As discussed above, only as conditioned can the proposed development be found consistent with the City's Certified LCP regarding public access and parking. Therefore, approval of the proposed development would not prejudice the ability of the City to continue to implement its certified LCP.

8. Consistency with the California Environmental Quality Act (CEQA). Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the geologic stability and public access policies of the Coastal Act. Mitigation measures, including submission of revised plans and maintenance and monitoring requirements, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.